

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **11/22/2004**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Rhodes**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **State Govt - miscellaneous**

Extra Copies:

Submit via email: **NO**

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### **Pre Topic:**

DOA:.....Rhodes, BB0252 -

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### **Topic:**

Attorney consolidation; transfer to DOA

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### **Instructions:**

See Attached

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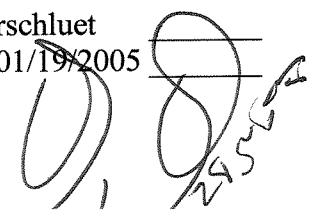
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*Handwritten signatures and initials:*  
/7 1/24 jld  
12/24/05  
12/24/05

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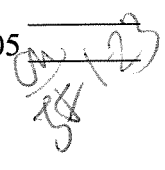
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## 2005-07 Budget Bill Statutory Language Drafting Request

- Topic: Attorney Consolidation
- Tracking Code: (Assigned by Government Operations Team)
- SBO team: Special Projects **BB0252**
- SBO analyst: Sarah Justus
  - Phone: 7-6921
  - Email: sarah.justus@doa.state.wi.us
- Agency acronym:
- Agency number:

Will meet with Peter Grant in person to provide drafting instructions.

11/11/04

Meeting with Sarah Justice and Dennis Rhodes from DOA.

- Create a "state law firm." Start with LRB 03-1824/8.
- All agency attorneys become DOA employees, with certain exceptions. See – 1824/8, p. 9, but do not exclude DORL. Attorneys will be housed together. Include legal staff as well (paralegals, legal assistants, and legal secretaries).
- RE hearing examiners, hearing officers, and administrative law judges: all go to DOA's division of hearings and appeals except leave DWD's alone.
- Do cutting and bumping within each agency before transferring. *- PG says okay as written*
- RE funding mechanism: see page 2, lines 1-8 and 15-18 of –1824/8.

Things being considered:

- Leave one FTE general counsel, unclassified and appointed by agency secretary, in each agency with at least 100 FTEs. Maybe give person some staff as well.
- Check to see if can make it more difficult for DOJ to say no when agency (DOA) asks DOJ to pursue a case.
- Create a new division in DOA for the attorneys.
- Create a new classification for the attorneys ("enterprise attorneys"?). If do this, may require attorneys to apply.
- Move administrative rule coordinators to DOA as well.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0955/D1  
CMH&RAC:.....

D-NORE

12/15

jld

DOA:.....Rhodes, BB0252 - Attorney consolidation; transfer to DOA

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

UPS -  
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AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive-branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the division of legal services effective on October 1, 2005, or on the first day of the third month beginning after the bill is enacted, whichever is later. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges to the division of hearings and appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains the chief counsel position in each of 13 major state agencies.

Under this bill, executive branch agencies that require legal services may employ an attorney in a position authorized by law, contract with DOA for legal services, allow DOJ to furnish legal services if DOJ is required by law to furnish the services, allow or contract with the division of hearing and appeals to furnish legal services if the division of hearing and appeals is required or authorized by law to furnish the services, or employ or retain any attorney who is not a state employee if the governor approves.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           SECTION 1. 15.103 (1g) of the statutes is created to read:

2           15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of  
3 administration a division of legal services. The administrator of the division shall  
4 be appointed by the secretary of administration in the unclassified service.

5           SECTION 2. 16.004 (15) of the statutes is created to read:

6           16.004 (15) LEGAL SERVICES. (a) In this subsection, "state agency" means an  
7 office, commission, department, independent agency, or board in the executive  
8 branch of state government, and includes the building commission.

9           (b) The department may provide legal services to state agencies. Annually, the  
10 department shall assess each state agency for the cost of the legal services provided  
11 to the state agency. The department shall credit all moneys received from state  
12 agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

13           SECTION 3. 20.505 (1) (kr) of the statutes is created to read:

14           20.505 (1) (kr) *Legal services*. All moneys received from assessments levied  
15 against state agencies under s. 16.004 (15) (b) for legal services provided by the  
16 department of administration to be used for providing those legal services.

      \*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
reflected in the revised schedule in s. 20.005, stats.

17           SECTION 4. 73.01 (4) (b) of the statutes is amended to read:

18           73.01 (4) (b) Any matter required to be heard by the commission may be heard  
19 by any member of the commission or its a hearing examiner and reported to the  
20 commission, and hearings of matters pending before it shall be assigned to members

1 of the commission or ~~its~~ the hearing examiner by the chairperson. Cases other than  
2 small claims cases shall be decided by the full commission, except that if one or more  
3 members of the commission are unavailable, cases other than small claims cases  
4 shall be decided by the member or members assigned by the chairperson prior to the  
5 hearing. If the parties have agreed to an oral decision, the member or members  
6 conducting the hearing may render an oral decision. Hearings shall be open to the  
7 public and all proceedings shall be conducted in accordance with rules of practice and  
8 procedure prescribed by the commission. Small claims cases shall be decided by one  
9 commissioner assigned by the chairperson prior to the hearing.

**History:** 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 177 s. 85; 1979 c. 221; 1981 c. 20, 317; 1983 a. 27, 277; 1985 a. 29 ss. 1403 to 1411, 3202 (56) (d); 1987 a. 27 ss. 1542m, 1543m, 3202 (47) (a); 1987 a. 142, 186, 198, 312, 399, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 335; 1991 a. 39, 262, 315, 316; 1993 a. 184, 213; 1995 a. 351; 1997 a. 27; 1999 a. 145; 2001 a. 16; 2003 a. 33.

10 **SECTION 5.** 73.01 (4m) (b) of the statutes is amended to read:

11 73.01 (4m) (b) No member of the commission, including the chairperson, or ~~its~~  
12 a hearing examiner may receive any salary unless he or she first executes an  
13 affidavit at the end of each salary period stating that he or she has complied with the  
14 deadlines in par. (a). The affidavit shall be presented to and filed with every official  
15 who certifies, in whole or in part, the salary.

**History:** 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 177 s. 85; 1979 c. 221; 1981 c. 20, 317; 1983 a. 27, 277; 1985 a. 29 ss. 1403 to 1411, 3202 (56) (d); 1987 a. 27 ss. 1542m, 1543m, 3202 (47) (a); 1987 a. 142, 186, 198, 312, 399, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 335; 1991 a. 39, 262, 315, 316; 1993 a. 184, 213; 1995 a. 351; 1997 a. 27; 1999 a. 145; 2001 a. 16; 2003 a. 33.

16 **SECTION 6.** 73.01 (4m) (c) of the statutes is amended to read:

17 73.01 (4m) (c) If a member of the commission, including the chairperson, or ~~its~~  
18 a hearing examiner is unable to comply with the deadline under par. (a), that person  
19 shall so certify in the record, and the period is then extended for one additional period  
20 not to exceed 90 days.

**History:** 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 177 s. 85; 1979 c. 221; 1981 c. 20, 317; 1983 a. 27, 277; 1985 a. 29 ss. 1403 to 1411, 3202 (56) (d); 1987 a. 27 ss. 1542m, 1543m, 3202 (47) (a); 1987 a. 142, 186, 198, 312, 399, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 335; 1991 a. 39, 262, 315, 316; 1993 a. 184, 213; 1995 a. 351; 1997 a. 27; 1999 a. 145; 2001 a. 16; 2003 a. 33.

21 **SECTION 7.** 85.013 (2) (a) of the statutes is amended to read:

85.013 (2) (a) The secretary shall designate ~~employees of the department as~~  
hearing examiners to preside over all hearings arising under ch. 344.

History: 1993 a. 16; 1999 a. 145.

**SECTION 8.** 230.08 (2) (e) 1. of the statutes is amended to read:

230.08 (2) (e) 1. Administration — ~~13~~ 14.

History: 1971 c. 40, 270; 1973 c. 333, 335; 1977 c. 29, 187; 1977 c. 196 ss. 34, 108, 130 (5); 1977 c. 272, 418, 449; Stats. 1977 s. 230.08; 1979 c. 34, 189, 221, 356, 361; 1981 c. 20, 347, 374; 1983 a. 27 ss. 1605o to 1609am, 2200 (15); 1983 a. 189 s. 329 (27); 1983 a. 371, 378; 1985 a. 29; 1987 a. 27, 119, 204, 354, 399, 403; 1989 a. 31, 107, 119, 122, 169, 208, 219, 336; 1991 a. 39, 250, 269; 1993 a. 16, 349, 399; 1995 a. 27 ss. 6245 to 6277m, 9126 (19), 9130 (4); 1995 a. 216; 1997 a. 3, 27, 179, 194, 237; 1999 a. 9, 42, 87, 186; 2001 a. 16, 19, 109; 2003 a. 33 ss. 2392, 2407b, 9160; 2003 a. 91, 326.

**SECTION 9.** 230.50 of the statutes is created to read:

**230.50 Agency legal services.** If an agency requires the performance of legal services to carry out its duties or exercise its power, the agency may do only one or more of the following to obtain the legal services:

(1) Employ an attorney in a position authorized under s. 16.505.

(2) Contract with the department of administration for legal services under s. 16.004 (15).

(3) Allow the department of justice to furnish legal services if the department of justice is required by law to furnish the services.

(4) (a) Allow the division of hearing and appeals created under s. 15.103 (1) to furnish legal services if the division of hearing and appeals is required or authorized by law to furnish the services.

(b) Contract under s. 227.43 (1m) for contested case hearing services with the division of hearings and appeals if the agency is not prohibited by law to do so.

(5) Employ or retain any attorney who is not a state employee if approved to do so under s. 20.930.

**SECTION 10.** 343.33 (2) of the statutes is amended to read:

343.33 (2) Upon the hearing, the department or ~~its~~ a hearing examiner may administer oaths, issue subpoenas for the attendance of witnesses and the



1 production of relevant books and papers and may require a reexamination of the  
2 licensee. No law enforcement officer or other witness produced by the person who  
3 has requested a hearing to testify on his or her behalf shall be paid a witness fee by  
4 the department nor shall any law enforcement officer called to appear for the  
5 department be paid any witness fee. All testimony shall be taken and transcribed.

History: 1977 c. 29 ss. 1460, 1654 (7) (a), (c) 1977 c. 418; 1981 c. 347 s. 80 (2); 1989 a. 72; 1993 a. 16.

6 **SECTION 9155. Nonstatutory provisions; other.**

7 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

8 (a) *Definitions.* In this subsection:

9 1. “Legal staff” means the individuals as determined by the secretary of  
10 administration who provide support services for attorneys.

11 2. “State agency” means an office, commission, department, independent  
12 agency, or board in the executive branch of state government, except the following:

13 a. The public service commission.

14 b. The public defender board.

15 c. The Board of Regents of the University of Wisconsin System.

16 d. The University of Wisconsin Hospitals and Clinics Board.

17 e. The state of Wisconsin investment board.

18 f. The office of the governor.

19 g. The elections board.

20 h. The ethics board.

21 i. The department of justice.

22 (b) *State agency attorneys and legal staff.* Except as provided in paragraph (c)  
23 and subject to paragraph (d), on the effective date of this paragraph all attorney

a.s.

a.s.

positions in state agencies and all legal staff positions in state agencies are transferred to the division of legal services in the department of administration.

(c) *Hearing officers, hearing examiners, and administrative law judges.*

1. Except as provided in subdivision 2. and subject to paragraph (d), on the effective date of this subdivision all positions identified by the secretary of administration as hearing officers, hearing examiners, or administrative law judges are transferred to the division of hearings and appeals in the department of administration.

2. Subdivision 1. does not apply to hearing officers, hearing examiners, or administrative law judges in the department of workforce development.

(d) *Exceptions.* Paragraphs (b) and (c) do not apply to any of the following:

1. State employees working in an office of a district attorney under section 978.12 (1) (b) or (c) of the statutes.

2. One attorney position in each of the following state agencies, identified by the secretary of administration as the chief counsel position:

a. Department of agriculture, trade and consumer protection.

b. Department of commerce.

c. Department of corrections.

d. Department of employee trust funds.

e. Department of financial institutions.

f. Department of health and family services.

g. Department of natural resources.

h. Department of public instruction.

i. Department of revenue.

j. Department of veterans affairs.

1 k. Department of workforce development.

2 l. Department of transportation.

3 m. Office of the commissioner of insurance.

4 (e) *Incumbents.* All incumbent employees holding positions that are  
5 transferred under paragraphs (b) and (c) are transferred on the effective date of this  
6 paragraph to the department of administration. Employees transferred under these  
7 paragraphs have all the rights and the same status under subchapter V of chapter  
8 111 and chapter 230 of the statutes in the department of administration that they  
9 enjoyed in their respective state agencies immediately before the transfer.  
10 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
11 has attained permanent status in class is required to serve a probationary period.

12 (f) *Materials.* On the effective date of this paragraph, all equipment, supplies,  
13 and furniture required for the provision of legal services by employees transferred  
14 under paragraphs (b) and (c) are transferred to the department of administration.  
15 The secretary of administration shall identify the equipment, supplies, and  
16 furniture to be transferred.

17 **SECTION 9455. Effective dates; other.**

18 (1) *TRANSFER OF ATTORNEY POSITIONS.* The treatment of sections 15.103 (1g),  
19 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a), 230.08  
20 (2) (e) 1., 230.50, and 343.33 (2) of the statutes and SECTION 9155 (1) of this act take  
21 effect on October 1, 2005, or on the first day of the 3rd month beginning after  
22 publication, whichever is later.

23 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0955/1dn  
RAC&CMH:.....

*JLd*

*date*

Dennis Rhodes:

In reviewing this draft, please note the following:

\* 1. This draft provides for the transfer of certain state attorneys and their positions to the @ newly created Division of Legal Services and the existing Division of Hearings and Appeals in the Department of Administration (DOA). You have indicated that the governor intends to reduce the authorized attorney positions in the affected state agencies on the budget act's effective date and provide for the transfer of the remaining attorney positions and incumbents on October 1, 2005. (Presumably, this will be done in the accompanying budget books to the budget bill.) You may wish, though, to speak with the Office of State Employment Relations (OSER) to determine how much notice will be required under the attorneys collective bargaining agreement to begin layoffs of attorneys in the affected state agencies. Our suspicion is that the reduction in authorized attorney positions cannot take effect immediately on the act's effective date, but must occur at least a couple of weeks after that date. If you do not wish to speak with OSER, let us know and we can find the answer for you.

\* 2. In reviewing the draft, please note the different structure that we have used to carry out the governor's intent. We have created s. 230.50, a general provision in the state employment chapter that delimits the manner in which state agencies in the executive branch can carry out duties or exercise powers requiring the performance of legal services. Essentially, state agencies will now have six specific options for obtaining legal services, five of which are already authorized by current law and the new option, under s. 230.50 (2), is the one providing for contracting with DOA. By creating this general provision, we were able to substantially truncate the length of last session's budget draft on this issue. If a covered state agency is authorized an attorney position, such as a chief counsel position, it will be able to use that attorney for legal services; otherwise, it will have to contract with DOA for the performance of all of legal services that it cannot obtain through the Department of Justice or the Division of Hearings and Appeals under current law. The other option, of course, is to employ outside counsel, but approval for that option is already governed by s. 20.930. *the*

\* 3. In this draft, we have created a statutory Division of Legal Services in DOA and provided that the administrator of that division is to be appointed by the secretary of administration and is to serve in the unclassified service. Please make certain that this

is your intent. If this language is not included in the draft, the secretary of administration will decide the manner in which the attorneys will be organized at DOA and the administrator of any legal division created by the secretary for that purpose will be appointed by the secretary in the classified service of the state civil service. As a classified state employee, that administrator will not be an employee-at-will, but may only be dismissed or disciplined for cause.

4. The manner in which s. 16.004 (15) is drafted will permit DOA to decide if it wishes to provide legal services to a state agency that requests such services. This should not be a problem, but a situation could possibly occur in which a state agency and DOA cannot agree about the extent or substance of legal representation provided by DOA for that state agency. That state agency may have no recourse for other legal representation. This could be a problem for a state agency that has fiduciary responsibilities, such as the Department of Employee Trust Funds (DETF), if that state agency believes that the exercise of its fiduciary duty requires a different kind or level of legal services than that provided by DOA. One option is to include DETF among those state agencies not affected by the draft; another would be to permit DETF to retain outside counsel without the governor's approval under s. 20.930.

5. If the aim of the draft is to take away authorized attorney positions from state agencies, except for those agencies exempted from the draft and those allowed to retain a chief counsel position, you should note that the Joint Committee on Finance (JCF) can currently authorize attorney positions on its own under s. 13.10. If the governor wishes to control authorized attorney positions in state agencies by law, you may wish to restrict JCF's power to create authorized attorney positions for state agencies other than DOA.

6. In looking over the list of state agencies that are exempted from the draft under SECTION 9155 (1) (a) 2., we see that the University of Wisconsin Hospitals and Clinics Board is included. Query: Is there an attorney position at this board? Isn't the only real duty of this board to contract with the University of Wisconsin Hospitals and Clinics Authority for the provision of nonprofessional employee services? I also see that the Wisconsin Employment Relations Commission (WERC) is not included among the exempted agencies, nor is it allowed to retain a chief counsel position under SECTION 9155 (1) (d). Is this your intent? You may wish to look closely at WERC's duties, which largely entail specialized legal expertise in mediation and arbitration matters.

7. We see that the only appropriation for DOA legal services is s. 20.505 (1) (kr). Will there be sufficient moneys in that PR-S appropriation account to pay the attorneys for the first several months of their employment at DOA? You may wish to have us draft a nonstatutory assessment of covered state agencies immediately on the bill's effective date or have us draft a statutory provision allowing DOA to assess for future legal services based on a methodology developed by DOA.

8. You indicated in your instructions that DOA is giving some thought to unclassifying all of the attorney positions at DOA. Please note that under *Bahr v. State Inv. Board*, 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994), classified state employees whose

positions are transferred to the unclassified state civil service and who remain in those positions do retain certain classified employment rights.

Once you have had an opportunity to review the draft, please contact us with any questions.

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: cathlene.hanaman@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0955/1dn  
RAC&CMH:jld:rs

December 15, 2004

Dennis Rhodes:

In reviewing this draft, please note the following:

1. This draft provides for the transfer of certain state attorneys and their positions to the newly created Division of Legal Services and the existing Division of Hearings and Appeals in the Department of Administration (DOA). You have indicated that the governor intends to reduce the authorized attorney positions in the affected state agencies on the budget act's effective date and provide for the transfer of the remaining attorney positions and incumbents on October 1, 2005. (Presumably, this will be done in the accompanying budget books to the budget bill.) You may wish, though, to speak with the Office of State Employment Relations (OSER) to determine how much notice will be required under the attorneys collective bargaining agreement to begin layoffs of attorneys in the affected state agencies. Our suspicion is that the reduction in authorized attorney positions cannot take effect immediately on the act's effective date, but must occur at least a couple of weeks after that date. If you do not wish to speak with OSER, let us know and we can find the answer for you.

2. In reviewing the draft, please note the different structure that we have used to carry out the governor's intent. We have created s. 230.50, a general provision in the state employment chapter that delimits the manner in which state agencies in the executive branch can carry out duties or exercise powers requiring the performance of legal services. Essentially, state agencies will now have six specific options for obtaining legal services, five of which are already authorized by current law and the new option, under s. 230.50 (2), is the one providing for contracting with DOA. By creating this general provision, we were able to substantially truncate the length of last session's budget draft on this issue. If a covered state agency is authorized an attorney position, such as a chief counsel position, it will be able to use that attorney for legal services; otherwise, it will have to contract with DOA for the performance of all of the legal services that it cannot obtain through the Department of Justice or the Division of Hearings and Appeals under current law. The other option, of course, is to employ outside counsel, but approval for that option is already governed by s. 20.930.

3. In this draft, we have created a statutory Division of Legal Services in DOA and provided that the administrator of that division is to be appointed by the secretary of administration and is to serve in the unclassified service. Please make certain that this is your intent.

4. The manner in which s. 16.004 (15) is drafted will permit DOA to decide if it wishes to provide legal services to a state agency that requests such services. This should not be a problem, but a situation could possibly occur in which a state agency and DOA cannot agree about the extent or substance of legal representation provided by DOA for that state agency. That state agency may have no recourse for other legal representation. This could be a problem for a state agency that has fiduciary responsibilities, such as the Department of Employee Trust Funds (DETF), if that state agency believes that the exercise of its fiduciary duty requires a different kind or level of legal services than that provided by DOA. One option is to include DETF among those state agencies not affected by the draft; another would be to permit DETF to retain outside counsel without the governor's approval under s. 20.930.

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6. In looking over the list of state agencies that are exempted from the draft under SECTION 9155 (1) (a) 2., we see that the University of Wisconsin Hospitals and Clinics Board is included. Query: Is there an attorney position at this board? Isn't the only real duty of this board to contract with the University of Wisconsin Hospitals and Clinics Authority for the provision of nonprofessional employee services? I also see that the Wisconsin Employment Relations Commission (WERC) is not included among the exempted agencies, nor is it allowed to retain a chief counsel position under SECTION 9155 (1) (d). Is this your intent? You may wish to look closely at WERC's duties, which largely entail specialized legal expertise in mediation and arbitration matters.

7. We see that the only appropriation for DOA legal services is s. 20.505 (1) (kr). Will there be sufficient moneys in that PR-S appropriation account to pay the attorneys for the first several months of their employment at DOA? You may wish to have us draft a nonstatutory assessment of covered state agencies immediately on the bill's effective date or have us draft a statutory provision allowing DOA to assess for future legal services based on a methodology developed by DOA.

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Once you have had an opportunity to review the draft, please contact us with any questions.

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: cathlene.hanaman@legis.state.wi.us

## Champagne, Rick

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**From:** Rhodes, Dennis  
**Sent:** Friday, December 17, 2004 10:01 AM  
**To:** Champagne, Rick; Hanaman, Cathlene  
**Cc:** Kraus, Jennifer - DOA  
**Subject:** RE: LRB Draft: 05-0955/1 Attorney consolidation; transfer to DOA

We do want to add the Wisconsin Employment Relations Commission (WERC) to the list of exempted agencies as you suggest in DN #6.

Hopefully more substantial feedback to follow soon.

Thanks,

Dennis Rhodes  
Executive Policy and Budget Analyst  
Department of Administration  
Tel: (608)266-2288  
Fax: (608)267-0372  
dennis.rhodes@doa.state.wi.us

-----Original Message-----

**From:** Schlueter, Ron [mailto:Ron.Schlueter@legis.state.wi.us]  
**Sent:** Wednesday, December 15, 2004 10:46 AM  
**To:** Rhodes, Dennis  
**Cc:** Johnston, James; Hanaman, Cathlene; Haugen, Caroline; Merry-Mason, Monica  
**Subject:** LRB Draft: 05-0955/1 Attorney consolidation; transfer to DOA

Following is the PDF version of draft 05-0955/1.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0955/12  
CMH&RAC:jld/ks  
Keep  
RMR

Today

DOA:.....Rhodes, BB0252 - Attorney consolidation; transfer to DOA

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Do Not  
Gen

1

AN ACT ...; relating to: the budget

*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive-branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the division of legal services effective on October 1, 2005, or on the first day of the third month beginning after the bill is enacted, whichever is later. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges to the division of hearings and appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains the chief counsel position in each of 13 major state agencies.

Under this bill, executive branch agencies that require legal services may employ an attorney in a position authorized by law, contract with DOA for legal services, allow DOJ to furnish legal services if DOJ is required by law to furnish the services, allow or contract with the division of hearing and appeals to furnish legal services if the division of hearing and appeals is required or authorized by law to furnish the services, or employ or retain any attorney who is not a state employee if the governor approves.

The Employment Relations Commission,

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 15.103 (1g) of the statutes is created to read:

2       15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of  
3       administration a division of legal services. The administrator of the division shall  
4       be appointed by the secretary of administration in the unclassified service.

5       **SECTION 2.** 16.004 (15) of the statutes is created to read:

6       16.004 (15) LEGAL SERVICES. (a) In this subsection, “state agency” means an  
7       office, commission, department, independent agency, or board in the executive  
8       branch of state government, and includes the building commission.

9       (b) The department may provide legal services to state agencies. Annually, the  
10       department shall assess each state agency for the cost of the legal services provided  
11       to the state agency. The department shall credit all moneys received from state  
12       agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

13       **SECTION 3.** 20.505 (1) (kr) of the statutes is created to read:

14       20.505 (1) (kr) *Legal services.* All moneys received from assessments levied  
15       against state agencies under s. 16.004 (15) (b) for legal services provided by the  
16       department of administration to be used for providing those legal services.

      \*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
      reflected in the revised schedule in s. 20.005, stats.

17       **SECTION 4.** 73.01 (4) (b) of the statutes is amended to read:

18       73.01 (4) (b) Any matter required to be heard by the commission may be heard  
19       by any member of the commission or its a hearing examiner and reported to the  
20       commission, and hearings of matters pending before it shall be assigned to members

1 of the commission or its the hearing examiner by the chairperson. Cases other than  
2 small claims cases shall be decided by the full commission, except that if one or more  
3 members of the commission are unavailable, cases other than small claims cases  
4 shall be decided by the member or members assigned by the chairperson prior to the  
5 hearing. If the parties have agreed to an oral decision, the member or members  
6 conducting the hearing may render an oral decision. Hearings shall be open to the  
7 public and all proceedings shall be conducted in accordance with rules of practice and  
8 procedure prescribed by the commission. Small claims cases shall be decided by one  
9 commissioner assigned by the chairperson prior to the hearing.

10 **SECTION 5.** 73.01 (4m) (b) of the statutes is amended to read:

11 73.01 (4m) (b) No member of the commission, including the chairperson, or its  
12 a hearing examiner may receive any salary unless he or she first executes an  
13 affidavit at the end of each salary period stating that he or she has complied with the  
14 deadlines in par. (a). The affidavit shall be presented to and filed with every official  
15 who certifies, in whole or in part, the salary.

16 **SECTION 6.** 73.01 (4m) (c) of the statutes is amended to read:

17 73.01 (4m) (c) If a member of the commission, including the chairperson, or its  
18 a hearing examiner is unable to comply with the deadline under par. (a), that person  
19 shall so certify in the record, and the period is then extended for one additional period  
20 not to exceed 90 days.

21 **SECTION 7.** 85.013 (2) (a) of the statutes is amended to read:

22 85.013 (2) (a) The secretary shall designate ~~employees of the department as~~  
23 hearing examiners to preside over all hearings arising under ch. 344.

24 **SECTION 8.** 230.08 (2) (e) 1. of the statutes is amended to read:

25 230.08 (2) (e) 1. Administration — ~~13~~ 14.

1           **SECTION 9.** 230.50 of the statutes is created to read:

2           **230.50 Agency legal services.** If an agency requires the performance of legal  
3 services to carry out its duties or exercise its power, the agency may do only one or  
4 more of the following to obtain the legal services:

5           (1) Employ an attorney in a position authorized under s. 16.505.

6           (2) Contract with the department of administration for legal services under s.  
7 16.004 (15).

8           (3) Allow the department of justice to furnish legal services if the department  
9 of justice is required by law to furnish the services.

10          (4) (a) Allow the division of hearing and appeals created under s. 15.103 (1) to  
11 furnish legal services if the division of hearing and appeals is required or authorized  
12 by law to furnish the services.

13          (b) Contract under s. 227.43 (1m) for contested case hearing services with the  
14 division of hearings and appeals if the agency is not prohibited by law to do so.

15          (5) Employ or retain any attorney who is not a state employee if approved to  
16 do so under s. 20.930.

17           **SECTION 10.** 343.33 (2) of the statutes is amended to read:

18           343.33 (2) Upon the hearing, the department or ~~its~~ a hearing examiner may  
19 administer oaths, issue subpoenas for the attendance of witnesses and the  
20 production of relevant books and papers and may require a reexamination of the  
21 licensee. No law enforcement officer or other witness produced by the person who  
22 has requested a hearing to testify on his or her behalf shall be paid a witness fee by  
23 the department nor shall any law enforcement officer called to appear for the  
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25           **SECTION 9155. Nonstatutory provisions; other.**

1 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

2 (a) *Definitions.* In this subsection:

3 1. "Legal staff" means the individuals as determined by the secretary of  
4 administration who provide support services for attorneys.

5 2. "State agency" means an office, commission, department, independent  
6 agency, or board in the executive branch of state government, except the following:

7 a. The public service commission.

8 b. The public defender board.

9 c. The Board of Regents of the University of Wisconsin System.

10 d. The University of Wisconsin Hospitals and Clinics Board.

11 e. The state of Wisconsin investment board.

12 f. The office of the governor.

13 g. The elections board.

14 h. The ethics board.

15 i. The department of justice.

16 j. *The employment relations commission.*  
17 (b) *State agency attorneys and legal staff.* Except as provided in paragraph (c)  
18 and subject to paragraph (d), on the effective date of this paragraph all attorney  
19 positions in state agencies and all legal staff positions in state agencies are  
20 transferred to the division of legal services in the department of administration.

21 (c) *Hearing officers, hearing examiners, and administrative law judges.*

22 1. Except as provided in subdivision 2. and subject to paragraph (d), on the  
23 effective date of this subdivision all positions identified by the secretary of  
24 administration as hearing officers, hearing examiners, or administrative law judges  
25 are transferred to the division of hearings and appeals in the department of  
administration.

1           2. Subdivision 1. does not apply to hearing officers, hearing examiners, or  
2 administrative law judges in the department of workforce development.

3           (d) *Exceptions.* Paragraphs (b) and (c) do not apply to any of the following:

4           1. State employees working in an office of a district attorney under section  
5 978.12 (1) (b) or (c) of the statutes.

6           2. One attorney position in each of the following state agencies, identified by  
7 the secretary of administration as the chief counsel position:

8           a. Department of agriculture, trade and consumer protection.

9           b. Department of commerce.

10          c. Department of corrections.

11          d. Department of employee trust funds.

12          e. Department of financial institutions.

13          f. Department of health and family services.

14          g. Department of natural resources.

15          h. Department of public instruction.

16          i. Department of revenue.

17          j. Department of veterans affairs.

18          k. Department of workforce development.

19          l. Department of transportation.

20          m. Office of the commissioner of insurance.

21          (e) *Incumbents.* All incumbent employees holding positions that are  
22 transferred under paragraphs (b) and (c) are transferred on the effective date of this  
23 paragraph to the department of administration. Employees transferred under these  
24 paragraphs have all the rights and the same status under subchapter V of chapter  
25 111 and chapter 230 of the statutes in the department of administration that they



1     enjoyed in their respective state agencies immediately before the transfer.  
2     Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
3     has attained permanent status in class is required to serve a probationary period.

4           (f) *Materials.* On the effective date of this paragraph, all equipment, supplies,  
5     and furniture required for the provision of legal services by employees transferred  
6     under paragraphs (b) and (c) are transferred to the department of administration.  
7     The secretary of administration shall identify the equipment, supplies, and  
8     furniture to be transferred.

9           **SECTION 9455. Effective dates; other.**

10          (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.103 (1g),  
11     16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a), 230.08  
12     (2) (e) 1., 230.50, and 343.33 (2) of the statutes and SECTION 9155 (1) of this act take  
13     effect on October 1, 2005, or on the first day of the 3rd month beginning after  
14     publication, whichever is later.

15   **(END)**

3  
WJ  
KMR

DOA:.....Rhodes, BB0252 - Attorney consolidation; transfer to DOA  
FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

d-n

TODAY  
please

①

AN ACT ...; relating to: the budget ⑥

*Analysis by the Legislative Reference Bureau*

## STATE GOVERNMENT

## OTHER STATE GOVERNMENT

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive-branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the division of legal services effective on October 1, 2005, or on the first day of the third month beginning after the bill is enacted, whichever is later. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges to the division of hearings and appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the Employment Relations Commission, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains the chief counsel position in each of 13 major state agencies.

Under this bill, executive branch agencies that require legal services may  
(1) employ an attorney in a position authorized by law, contract with DOA for legal services, allow DOJ to furnish legal services if DOJ is required by law to furnish the services, allow or contract with the division of hearing and appeals to furnish legal services if the division of hearing and appeals is required or authorized by law to furnish the services, or employ or retain any attorney who is not a state employee if the governor approves.

(4)

(3)

(5)

Subject to the approval  
of the governor

an attorney may do so only in one of the

are authorized  
or required to  
employ or retain

following ways:

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 15.103 (1g)<sup>✓</sup> of the statutes is created to read:

2       15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of  
3       administration a division of legal services. The administrator of the division shall  
4       be appointed by the secretary of administration in the unclassified service.

5       **SECTION 2.** 16.004 (15)<sup>✓</sup> of the statutes is created to read:

6       16.004 (15) LEGAL SERVICES. (a) In this subsection, "state agency" means an  
7       office, commission, department, independent agency, or board in the executive  
8       branch of state government, and includes the building commission.

9       (b) The department may provide legal services to state agencies. Annually, the  
10       department shall assess each state agency for the cost of the legal services provided  
11       to the state agency. The department shall credit all moneys received from state  
12       agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

13       **SECTION 3.** 20.505 (1) (kr)<sup>✓</sup> of the statutes is created to read:

14       20.505 (1) (kr) *Legal services.* All moneys received from assessments levied  
15       against state agencies under s. 16.004 (15) (b)<sup>✓</sup> for legal services provided by the  
16       department of administration to be used for providing those legal services.

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
      reflected in the revised schedule in s. 20.005, stats.

17       **SECTION 4.** 73.01 (4) (b)<sup>✓</sup> of the statutes is amended to read:

18       73.01 (4) (b) Any matter required to be heard by the commission may be heard  
19       by any member of the commission or its a hearing examiner and reported to the  
20       commission, and hearings of matters pending before it shall be assigned to members

1 of the commission or ~~its~~ the hearing examiner by the chairperson. Cases other than  
2 small claims cases shall be decided by the full commission, except that if one or more  
3 members of the commission are unavailable, cases other than small claims cases  
4 shall be decided by the member or members assigned by the chairperson prior to the  
5 hearing. If the parties have agreed to an oral decision, the member or members  
6 conducting the hearing may render an oral decision. Hearings shall be open to the  
7 public and all proceedings shall be conducted in accordance with rules of practice and  
8 procedure prescribed by the commission. Small claims cases shall be decided by one  
9 commissioner assigned by the chairperson prior to the hearing.

10 **SECTION 5.** 73.01 (4m) (b) <sup>✓</sup> of the statutes is amended to read:

11 73.01 **(4m)** (b) No member of the commission, including the chairperson, or ~~its~~  
12 a hearing examiner may receive any salary unless he or she first executes an  
13 affidavit at the end of each salary period stating that he or she has complied with the  
14 deadlines in par. (a). The affidavit shall be presented to and filed with every official  
15 who certifies, in whole or in part, the salary.

16 **SECTION 6.** 73.01 (4m) (c) <sup>✓</sup> of the statutes is amended to read:

17 73.01 **(4m)** (c) If a member of the commission, including the chairperson, or ~~its~~  
18 a hearing examiner is unable to comply with the deadline under par. (a), that person  
19 shall so certify in the record, and the period is then extended for one additional period  
20 not to exceed 90 days.

21 **SECTION 7.** 85.013 (2) (a) <sup>✓</sup> of the statutes is amended to read:

22 85.013 **(2)** (a) The secretary shall designate ~~employees of the department as~~  
23 hearing examiners to preside over all hearings arising under ch. 344.

24 **SECTION 8.** 230.08 (2) (e) <sup>✓</sup> 1. of the statutes is amended to read:

25 230.08 **(2)** (e) 1. Administration — ~~13~~ 14.

## SECTION 9

SECTION 9. 230.50 of the statutes is created to read:

**230.50 Agency legal services.** If an agency ~~requires~~<sup>is authorized or required to employ or retain an attorney</sup> the performance of legal services to carry out its duties or exercise its power, the agency may do only one or more of the following <sup>ways</sup> to obtain the legal services:

(1) Employ an attorney in a position authorized under s. 16.505. ✓

(2) Contract with the department of administration for legal services under s. 16.004 (15). ✓

(3) Allow the department of justice to furnish legal services if the department of justice is required by law to furnish the services. ✓

(10) (4) (a) Allow the division of hearing<sup>s</sup><sub>A</sub> and appeals created under s. 15.103 (1) to  
(11) furnish legal services if the division of hearing<sup>s</sup><sub>A</sub> and appeals is required or authorized by law to furnish the services.

(b) Contract under s. 227.43 (1m) ✓ for contested case hearing services with the division of hearings and appeals if the agency is not prohibited by law to do so.

(5) Employ or retain any attorney who is not a state employee (if approved to do so under s. 20.930. ✓ <sup>subject to</sup>

SECTION 10. 343.33 (2) of the statutes is amended to read:

343.33 (2) Upon the hearing, the department or its a hearing examiner may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. No law enforcement officer or other witness produced by the person who has requested a hearing to testify on his or her behalf shall be paid a witness fee by the department nor shall any law enforcement officer called to appear for the department be paid any witness fee. All testimony shall be taken and transcribed.

SECTION 9155. Nonstatutory provisions; other. ✓

1 (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

2 (a) *Definitions.* In this subsection:

3 1. “Legal staff” means the individuals as determined by the secretary of  
4 administration who provide support services for attorneys.

5 2. “State agency” means an office, commission, department, independent  
6 agency, or board in the executive branch of state government, except the following:

7 a. The public service commission. ✓

8 b. The public defender board. ✓

9 c. The Board of Regents of the University of Wisconsin System. ✓

10 d. The University of Wisconsin Hospitals and Clinics Board. ✓

11 e. The state of Wisconsin investment board. ✓

12 f. The office of the governor. ✓

13 g. The elections board. ✓

14 h. The ethics board. ✓

15 i. The department of justice. ✓

16 j. The employment relations commission. ✓

17 (b) *State agency attorneys and legal staff.* Except as provided in paragraph (c) ✓  
18 and subject to paragraph (d) ✓, on the effective date of this paragraph all attorney  
19 positions in state agencies and all legal staff positions in state agencies are  
20 transferred to the division of legal services in the department of administration.

21 (c) *Hearing officers, hearing examiners, and administrative law judges.*

22 1. Except as provided in subdivision 2. ✓ and subject to paragraph (d) ✓, on the  
23 effective date of this subdivision ✓ all positions identified by the secretary of  
24 administration as hearing officers, hearing examiners, or administrative law judges

1 are transferred to the division of hearings and appeals in the department of  
2 administration.

3 2. Subdivision 1. <sup>✓</sup> does not apply to hearing officers, hearing examiners, or  
4 administrative law judges in the department of workforce development.

5 (d) *Exceptions.* Paragraphs (b) <sup>✓</sup> and (c) <sup>✓</sup> do not apply to any of the following:

6 1. State employees working in an office of a district attorney under section  
7 978.12 (1) (b) <sup>✓</sup> or (c) <sup>✓</sup> of the statutes.

8 2. One attorney position in each of the following state agencies, identified by  
9 the secretary of administration as the chief counsel position:

10 a. Department of agriculture, trade and consumer protection.

11 b. Department of commerce.

12 c. Department of corrections.

13 d. Department of employee trust funds.

14 e. Department of financial institutions.

15 f. Department of health and family services.

16 g. Department of natural resources.

17 h. Department of public instruction.

18 i. Department of revenue.

19 j. Department of veterans affairs.

20 k. Department of workforce development.

21 l. Department of transportation.

22 m. Office of the commissioner of insurance.

23 (e) *Incumbents.* All incumbent employees holding positions that are  
24 transferred under paragraphs (b) <sup>✓</sup> and (c) <sup>✓</sup> are transferred on the effective date of this  
25 paragraph <sup>✓</sup> to the department of administration. Employees transferred under these

1 paragraphs have all the rights and the same status under subchapter V of chapter  
2 111 and chapter 230 of the statutes in the department of administration that they  
3 enjoyed in their respective state agencies immediately before the transfer.  
4 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
5 has attained permanent status in class is required to serve a probationary period.

6 (f) *Materials*. On the effective date of this paragraph, all equipment, supplies,  
7 and furniture required for the provision of legal services by employees transferred  
8 under paragraphs (b) and (c) are transferred to the department of administration.  
9 The secretary of administration shall identify the equipment, supplies, and  
10 furniture to be transferred.

11 **SECTION 9455. Effective dates; other.**

12 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.103 (1g),  
13 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a), 230.08  
14 (2) (e) 1., 230.50, and 343.33 (2) of the statutes and SECTION 9155 (1) of this act take  
15 effect on October 1, 2005, or on the first day of the 3rd month beginning after  
16 publication, whichever is later.

17 (END)

0955/3dw  
CMH/RAC/

Dennis:  
¶ This draft reworks the intro to s 230.50 and  
makes a change to s 230.50 (5). Please contact us with  
any questions or comments.

CMH  
RAC



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0955/3dn  
CMH&RAC:jld:pg

December 23, 2004

Dennis:

This draft reworks the intro. to s. 230.50 and makes a change to s. 230.50 (5). Please contact us with any questions or comments.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.state.wi.us](mailto:cathlene.hanaman@legis.state.wi.us)

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## Hanaman, Cathlene

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**From:** Rhodes, Dennis  
**Sent:** Friday, January 14, 2005 4:39 PM  
**To:** Hanaman, Cathlene; Champagne, Rick  
**Cc:** Kraus, Jennifer - DOA  
**Subject:** Attorney Consolidation

Based on feedback from the Governor we have several requests and a couple of questions related to the Attorney Consolidation initiative.

Thanks,

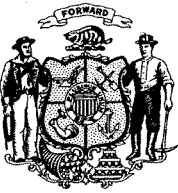
Dennis

### **Requests**

- 1) Add District Attorneys to the list of exempted state agencies.
- 2) Add Regulation & Licensing and Dept. of Administration to the list of agencies who get a general counsel position.
- 3) Remove Veteran's Affairs and Public Instruction from the list of agencies who get a general counsel position.
- 4) We want to create an additional exception for agencies who will retain 1 classified attorney, but will not get an unclassified general counsel position. Those five agencies are: OSER, Vets Affairs, DPI and ETF and Military Affairs.
- 5)a We want the ability to take 2 attorneys from DOJ who are currently doing tax litigation work.

### **Questions**

- 5)b After moving the DOJ tax litigation attorneys, do we need language that will allow them to appear in court?
- 6)a In the draft can we give DOA the authority to do administrative rules work currently being done by agencies but allow agencies to continue to do administrative rules work as well?
- 6)b In the draft can we have the authority to do Administrative Law Judge type work for all agencies except for DWD?



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0955/3

CMH&RAC:jld&wlj:pg

AMR

DOA:.....Rhodes, BB0252 - Attorney consolidation; transfer to DOA

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

TODAY  
please

Please  
check ARs

DO NOT GEN

1

AN ACT ...; relating to: the budget.

except for two attorney  
positions with investigating duties

*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**OTHER STATE GOVERNMENT**

This bill creates a division of legal services in DOA that is authorized to provide legal services to executive branch agencies. With certain exceptions, this bill transfers all attorney positions and all legal staff positions in executive branch agencies to the division of legal services effective on October 1, 2005, or on the first day of the third month beginning after the bill is enacted, whichever is later. This bill also transfers all positions identified as hearing examiners, hearing officers, or administrative law judges to the division of hearings and appeals in DOA. Attorney positions in DOJ, the Office of the State Public Defender, the PSC, the UW System, the Employment Relations Commission, the State of Wisconsin Investment Board, the Elections Board, the Ethics Board, and the Office of the Governor are exempt, as are all state employees working in an office of a district attorney. In addition, the bill retains the chief counsel position in each of 13 major state agencies.

Under this bill, executive branch agencies that are authorized or required to employ or retain an attorney may do so only in one of the following ways: (1) employ an attorney in a position authorized by law, (2) contract with DOA for legal services, (3) allow DOJ to furnish legal services if DOJ is required by law to furnish the services, (4) allow or contract with the division of hearings and appeals to furnish legal services if the division of hearings and appeals is required or authorized by law

a general

to furnish the services, or (5) employ or retain any attorney who is not a state employee subject to the approval of the governor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 15.103 (1g) of the statutes is created to read:

2       15.103 (1g) DIVISION OF LEGAL SERVICES. There is created in the department of  
3       administration a division of legal services. The administrator of the division shall  
4       be appointed by the secretary of administration in the unclassified service.

5       **SECTION 2.** 16.004 (15) of the statutes is created to read:

6       16.004 (15) LEGAL SERVICES. (a) In this subsection, “state agency” means an  
7       office, commission, department, independent agency, or board in the executive  
8       branch of state government, and includes the building commission.

9       (b) The department may provide legal services to state agencies. Annually, the  
10       department shall assess each state agency for the cost of the legal services provided  
11       to the state agency. The department shall credit all moneys received from state  
12       agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

13       **SECTION 3.** 20.505 (1) (kr) of the statutes is created to read:

14       20.505 (1) (kr) *Legal services.* All moneys received from assessments levied  
15       against state agencies under s. 16.004 (15) (b) for legal services provided by the  
16       department of administration to be used for providing those legal services.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

17       **SECTION 4.** 73.01 (4) (b) of the statutes is amended to read:

18       73.01 (4) (b) Any matter required to be heard by the commission may be heard  
19       by any member of the commission or its a hearing examiner and reported to the

1 commission, and hearings of matters pending before it shall be assigned to members  
2 of the commission or ~~its~~ the hearing examiner by the chairperson. Cases other than  
3 small claims cases shall be decided by the full commission, except that if one or more  
4 members of the commission are unavailable, cases other than small claims cases  
5 shall be decided by the member or members assigned by the chairperson prior to the  
6 hearing. If the parties have agreed to an oral decision, the member or members  
7 conducting the hearing may render an oral decision. Hearings shall be open to the  
8 public and all proceedings shall be conducted in accordance with rules of practice and  
9 procedure prescribed by the commission. Small claims cases shall be decided by one  
10 commissioner assigned by the chairperson prior to the hearing.

11 **SECTION 5.** 73.01 (4m) (b) <sup>↓</sup> of the statutes is amended to read:

12 73.01 (4m) (b) No member of the commission, including the chairperson, or ~~its~~  
13 a hearing examiner may receive any salary unless he or she first executes an  
14 affidavit at the end of each salary period stating that he or she has complied with the  
15 deadlines in par. (a). The affidavit shall be presented to and filed with every official  
16 who certifies, in whole or in part, the salary.

17 **SECTION 6.** 73.01 (4m) (c) <sup>↓</sup> of the statutes is amended to read:

18 73.01 (4m) (c) If a member of the commission, including the chairperson, or ~~its~~  
19 a hearing examiner is unable to comply with the deadline under par. (a), that person  
20 shall so certify in the record, and the period is then extended for one additional period  
21 not to exceed 90 days.

22 **SECTION 7.** 85.013 (2) (a) <sup>↓</sup> of the statutes is amended to read:

23 85.013 (2) (a) The secretary shall designate ~~employees of the department as~~  
24 hearing examiners to preside over all hearings arising under ch. 344.

25 **SECTION 8.** 230.08 (2) (e) 1. <sup>↓</sup> of the statutes is amended to read:

MS 4-2

1 230.08 (2) (e) 1. Administration — 13 14.

2 SECTION 9. 230.50 of the statutes is created to read:

3 230.50 Agency legal services. If an agency is authorized or required to  
4 employ or retain an attorney, the agency may do so only in the following ways:

5 (1) Employ an attorney in a position authorized under s. 16.505. ✓

6 (2) Contract with the department of administration for legal services under s.  
7 16.004 (15). ✓

8 (3) Allow the department of justice to furnish legal services if the department  
9 of justice is required by law to furnish the services. ✓

10 (4) (a) Allow the division of hearings and appeals created under s. 15.103 (1)  
11 to furnish legal services if the division of hearings and appeals is required or  
12 authorized by law to furnish the services.

13 (b) Contract under s. 227.43 (1m) for contested case hearing services with the  
14 division of hearings and appeals if the agency is not prohibited by law to do so.

15 (5) Employ or retain any attorney who is not a state employee subject to s.  
16 20.930. ✓

17 SECTION 10. 343.33 (2) of the statutes is amended to read:

18 343.33 (2) Upon the hearing, the department or its a hearing examiner may  
19 administer oaths, issue subpoenas for the attendance of witnesses and the  
20 production of relevant books and papers and may require a reexamination of the  
21 licensee. No law enforcement officer or other witness produced by the person who  
22 has requested a hearing to testify on his or her behalf shall be paid a witness fee by  
23 the department nor shall any law enforcement officer called to appear for the  
24 department be paid any witness fee. All testimony shall be taken and transcribed.

25 SECTION 9155. Nonstatutory provisions; other.

**AR5** (1) TRANSFER OF ATTORNEY AND LEGAL STAFF POSITIONS.

(a) *Definitions.* In this subsection:

1. "Legal staff" means the individuals as determined by the secretary of administration who provide support services for attorneys.
2. "State agency" means an office, commission, department, independent agency, or board in the executive branch of state government, except the following:
  - a. The public service commission.
  - b. The public defender board.
  - c. The Board of Regents of the University of Wisconsin System.
  - d. The University of Wisconsin Hospitals and Clinics Board.
  - e. The state of Wisconsin investment board.
  - f. The office of the governor.
  - g. The elections board.
  - h. The ethics board.
  - i. The department of justice.
  - j. The employment relations commission.

**AR3** (b) *State agency attorneys and legal staff.* Except as provided in paragraph (a) and subject to paragraph **AR2** (d), on the effective date of this paragraph all attorney positions in state agencies and all legal staff positions in state agencies are transferred to the division of legal services in the department of administration.

**AR1** (c) *Hearing officers, hearing examiners, and administrative law judges.*

1. Except as provided in subdivision 2. and subject to paragraph **AR2** (d), on the effective date of this subdivision all positions identified by the secretary of administration as hearing officers, hearing examiners, or administrative law judges

**AR2**  
Note: I did not add ARs to the list of exempted state agencies because paragraph (d) already includes them from the transfer.

INS  
5.21

are transferred to the division of hearings and appeals in the department of administration.

2. Subdivision 1. does not apply to hearing officers, hearing examiners, or administrative law judges in the department of workforce development.

<sup>AR2</sup> (H) <sup>AR3</sup> <sup>ARI</sup> Exceptions. Paragraphs (b) and (c) do not apply to any of the following:

1. State employees working in an office of a district attorney under section 978.12 (1) (b) or (c) of the statutes.

2. One attorney position in each of the following state agencies, identified by the secretary of administration as the <sup>general</sup> chief counsel position:

b. ~~Department of agriculture, trade and consumer protection.~~ <sup>Department of administration</sup>

c. ~~Department of commerce.~~

d. ~~Department of corrections.~~

e. ~~Department of employee trust funds.~~

f. ~~Department of financial institutions.~~

g. ~~Department of health and family services.~~

h. ~~Department of natural resources.~~

i. ~~Department of public instruction.~~ <sup>Department of regulation and licensing</sup>

j. ~~Department of revenue.~~

k. ~~Department of veterans affairs.~~

l. ~~Department of workforce development.~~ <sup>transportation</sup>

m. ~~Department of transportation.~~ <sup>workforce development</sup>

n. Office of the commissioner of insurance.

(e) Incumbents. All incumbent employees holding positions that are transferred under paragraphs (b) and (c) are transferred on the effective date of this paragraph to the department of administration. Employees transferred under these

<sup>AR4</sup>

(b)(m)



1 paragraphs have all the rights and the same status under subchapter V of chapter  
2 111 and chapter 230 of the statutes in the department of administration that they  
3 enjoyed in their respective state agencies immediately before the transfer.  
4 Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who  
5 has attained permanent status in class is required to serve a probationary period.

6 (f) *Materials*. On the effective date of this paragraph, all equipment, supplies,  
7 and furniture required for the provision of legal services by employees transferred  
8 under paragraphs (b) <sup>AR3</sup> and (c) <sup>AR1</sup> are transferred to the department of administration.  
9 The secretary of administration shall identify the equipment, supplies, and  
10 furniture to be transferred. <sup>AR4</sup> (b) <sup>(b)m</sup>

11 **SECTION 9455. Effective dates; other.**

12 (1) TRANSFER OF ATTORNEY POSITIONS. The treatment of sections 15.103 (1g),  
13 16.004 (15), 20.505 (1) (kr), 73.01 (4) (b) and (4m) (b) and (c), 85.013 (2) (a), 230.08  
14 (2) (e) 1, <sup>✓</sup>230.50, and 343.33 (2) of the statutes and SECTION 9155 (1) <sup>✓</sup> of this act take  
15 effect on October 1, 2005, <sup>✓</sup> or on the first day of the 3rd month <sup>✓</sup> beginning after  
16 publication, whichever is later.

17 (END)

and (eg) <sup>✓</sup>

AR5

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0955/4ins  
CMH&RAC:jld&wlj:pg

1           Insert 2-13

      \*\*\*\*NOTE: Dennis, we think "legal services" includes the preparation of administrative rules.

2           (c) An attorney employed by the department may prosecute or defend any  
3 action brought by or against the state in any matter relating to tax litigation. ✓

      \*\*\*\*NOTE: Dennis, please carefully review this provision. Is this the authority that you want?

4  
5           Insert 4-2

6           ~~SECTION 230.08~~ (2) (eg) ✓ of the statutes is created to read:

7           230.08 (2) (eg) A general counsel position in each of the following agencies: ✓

8           1. Department of administration. ✓

9           2. Department of agriculture, trade and consumer protection. ✓

10          3. Department of commerce. ✓

11          4. Department of corrections. ✓

12          5. Department of employee trust funds. ✓

13          6. Department of financial institutions. ✓

14          7. Department of health and family services. ✓

15          8. Department of natural resources. ✓

16          9. Department of regulation and licensing. ✓

17          10. Department of revenue. ✓

18          11. Department of workforce development. ✓

19          12. Department of transportation. ✓

20          13. Office of the commissioner of insurance. ✓

transportation

21

1           Insert 4-15

      \*\*\*\*NOTE: Dennis, we think that s. 227.43 (1m) in current law authorizes the  
division of hearings and appeals in DOA to do "administrative law judge type work for  
all agencies." No additional drafting is required.

2

3

4           Insert 5-21

5           <sup>paragraph</sup>  
6           <sup>AR 4</sup> (b)(1) Department of justice tax litigation attorneys. On the effective date of this  
7           paragraph, two attorney positions in the department of justice with duties entailing  
8           tax litigation are transferred to the division of legal services in the department of  
9           administration. The secretary of administration shall identify the positions to be  
10          transferred.